

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

19648

FITZ MAURICE
PL I

FILE: B-202536.2

DATE: October 6, 1981

MATTER OF: Commonwealth Research Group, Inc.

DIGEST:

Contracting agency did not abuse its administrative discretion when it excluded protester from the competitive range since the agency had a rational basis for concluding that the protester did not have a reasonable chance of being selected for the final award.

Commonwealth Research Group, Inc. (CRG), protests the exclusion from the competitive range of its proposal submitted in response to request for proposals (RFP) No. DE-RP01-81AD58004. The solicitation was issued by the Department of Energy (DOE).

The RFP requested proposals for the "Project Management Intermediate Level Skills Training Program Series" for DOE's Office of Personnel, Employee Development and Training Division. Thirteen proposals were received and, after completion of a technical evaluation of each proposal, only the three highest scored proposals were determined to be within the competitive range. CRG was ranked sixth. Upon being notified that its proposal was not within the competitive range, CRG requested a written debriefing. DOE sent CRG a letter which is essentially a consolidation of the narrative comments supplied by each member of the technical evaluation committee. Those comments point out both the strengths and weaknesses the evaluators found in CRG's proposal.

CRG's protest is a detailed rebuttal of these comments which, in CRG's opinion, are "factually incorrect, irrelevant, and/or internally inconsistent." In light of its rebuttal, CRG believes that it has demonstrated that DOE's decision to exclude the CRG proposal from the competitive range was improper.

of Proposal

2

~~116536~~ 116536

We find no basis to question DOE's competitive range determination.

At the outset, we note that the determination of whether a proposal is within the competitive range is primarily a matter of administrative discretion. Our Office will not make an independent determination of the acceptability or relative merits of technical proposals. Our review is limited to examining whether the agency's evaluation was fair and reasonable. The fact that the protester does not agree with the agency's evaluation of its proposal does not render the evaluation unreasonable. Jack Faucett Associates, B-200599, February 6, 1981, 81-1 CPD 72.

Here, the DOE evaluators found the following weaknesses in CRG's proposal: (1) the personnel proposed to conduct the training program lacked certain critical experience; (2) CRG itself lacked experience in direct project management or devising training programs in that area; (3) the proposal did not reflect a full understanding of the Statement of Work; (4) CRG's proposed approach for conducting the training program was weak; (5) the proposal did not reflect a knowledge of the current state of the art of project management; (6) CRG's program plan did not indicate that there would be effective coordination of CRG's personnel or adequate liaison with DOE; and (7) the CRG proposal did not adequately address the technical support and logistics which would be needed for contract performance.

In DOE's opinion, these deficiencies were such that CRG's proposal was not susceptible of being made acceptable through negotiations. Consequently, DOE excluded the CRG proposal from the competitive range. CRG, however, disputes each DOE finding.

For example, regarding the experience level of its proposed personnel, CRG maintains that its key personnel have had the project management experience DOE wants and that the resumes submitted as part of the proposal prove this. But, as noted above, DOE disagrees and in its evaluation concluded that CRG's personnel had more experience in an academic atmosphere than in the area of project management.

CRG would like us to make an independent finding on this issue, but that is not the function of our review. We can only look at the agency action to determine whether or not it has a reasonable basis. Jack Faucett Associates, supra.

What we are presented with here, then, is a body of data from which the two sides reach conflicting conclusions. CRG sees its proposal as worthy of a high ranking while DOE finds the proposal to be deficient. If we were to conduct an independent evaluation of CRG's proposal, we might agree with CRG's position; but, in reviewing solely the reasonableness of the DOE evaluation, we cannot conclude that DOE acted unreasonably in determining the relative value of the experience offered by the CRG personnel. The record indicates that the evaluation was done in accordance with the stated evaluation factors and that the DOE evaluators identified specific deficiencies in the experience offered by the CRG personnel. There is no evidence that DOE's evaluators acted unfairly; rather, CRG is actually arguing that their judgment is wrong. However, as noted above, merely because a protester does not agree with the agency's evaluation of its proposal does not render that evaluation unreasonable. Jack Faucett Associates, supra.

For each of the areas in which CRG believes that the facts prove that it should have received a higher rating, we are presented with the same conflict between CRG's subjective judgment and that of the DOE evaluators. And for each of these conflicts, we find no indication that the evaluators acted unreasonably or treated CRG's proposal unfairly. As a result, we have no basis to substitute our judgment for that of the DOE evaluators.

CRG also points out the existence of certain inconsistencies among the evaluators' comments and from this implies that the evaluation is defective. However, we have held that inconsistencies in scoring among individual evaluators, without more, do not cast doubt on the validity of the evaluation. See, for example, Panuzio/Rees Associates, B-197516, November 26, 1980, 80-2 CPD 395. Since we have found no indication here of CRG's proposal being treated

unfairly, we conclude that the mere existence of inconsistencies among the evaluators' comments does not render the evaluation defective.

CRG also argues that some of the evaluators' comments are irrelevant to the evaluation criteria. DOE, on the other hand, maintains that this is not so. For example, contrary to CRG's assertion, DOE argues that a contractor's familiarity with Office of Management and Budget Circular A-109 is relevant to project management procedures and was, therefore, properly considered by the evaluators.

We have held that, while agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which may be taken into account. All that is required is that those aspects be logically and reasonably related to or encompassed by the stated evaluation factors. Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

CRG's argument that some of the evaluators' comments are irrelevant essentially challenges DOE's discretion in establishing what aspects of the major evaluation factors are significant and, therefore, should be considered during the evaluation process. We do not believe that CRG has shown that DOE has abused its discretion in this matter. At best, we are again presented with conflicting statements from the protester and the contracting agency and, as indicated above, this does not carry a protester's burden of affirmatively proving its case. See also Moore-Johnson/Shotwell-Anderson, Inc., B-200093, February 11, 1981, 81-1 CPD 92.

We have held that a proposal need not be considered to be within the competitive range if, in light of the competition for the procurement, the offeror does not have a reasonable chance of being selected for the final award. Peter J. T. Nelsen, B-194728, October 29, 1979, 79-2 CPD 302.

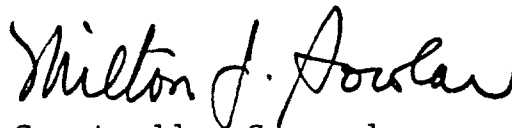
Here, DOE excluded the CRG proposal from the competitive range because CRG did not have a reasonable

chance of being selected for the final award. In DOE's opinion, the deficiencies in CRG's proposal were such that the proposal was not susceptible of being made acceptable through negotiations.

In our review, we have found that DOE's evaluation had a reasonable basis. We also note that CRG's technical score was more than 150 points below that of the lowest scored firm which was found within the competitive range. In addition, two other offerors, also excluded from the competitive range, had higher technical scores than CRG. Moreover, CRG's price proposal was the 12th highest out of the 13 proposals received.

Therefore, in view of CRG's standing in the competition, we find no basis to question DOE's conclusion that CRG did not have a reasonable chance of being selected for the final award and, thus, that its proposal should be excluded from the competitive range.

Protest denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States